STATE OF MICHIGAN

COURT OF APPEALS

LOWRY HOLDING COMPANY, INC, d/b/a LOWRY COMPUTER PRODUCTS, INC, and MICHAEL LOWRY, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED May 24, 2012
V	No. 303694 Livingston Circuit Court LC No. 09-024626-CK
GEROCO TECH HOLDING CORP., GEROCO TECH INTERNATIONAL CORP., and CARL CORLLEY, Defendants/Counter-Plaintiffs, Appellants.	

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

In this action involving claims for breach of contract, tortious interference with a business relationship, and violation of the Michigan Trade Secrets Act, appellants Geroco Tech Holding Corp, Geroco Tech International Corp, and Carl Corlley appeal as of right the trial court's grant of summary disposition in favor of appellees under MCR 2.116(C)(10). We affirm.

In May 2007, appellants and appellees entered into a Teaming Agreement in order to pursue certain identified opportunities with the United States Department of Defense (DOD). Appellees, who specialize in providing identification technology and data collection equipment, including radio-frequency identification technology (RFID), frequently conducted business with the DOD. Appellants, who offered supply chain and warehousing solutions, identified a potential business opportunity that involved replacing bar code labels with RFID tags in certain DOD warehouses. However, despite their intentions, appellants and appellees never engaged in business with one another because the purported opportunity with the DOD never materialized.

Subsequent to entering into the Teaming Agreement with appellants, appellees entered into several contracts with the DOD. Appellants allege that appellees breached the Teaming Agreement by doing so, and they argue that appellees were required to include appellants in their marketing efforts to the DOD. Appellants cite § 3(a) of the Teaming Agreement, which provided that the parties

> will each involve the other in marketing efforts to Prospects where either, in good faith, believes the other would be helpful in terms of quality, quantity, product line, service, support, or sales. The Parties expect that any successful sales effort will result in a contract for sale between the Prospect and one Party or the other or both. If other arrangements are reasonably required by the circumstances (i.e., a joint sale agreement), the Parties will negotiate in good faith to determine revenue and cost sharing and service, delivery, and support obligations.

Appellants argue that the DOD was a "prospect," as anticipated by the contract, and as such, appellees were obligated to include appellants in the contractual dealings at issue on this appeal. We do not agree.

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010) (quotation omitted). "An unambiguous contractual provision reflects the parties' intent as a matter of law, and '[i]f the language of the contract is unambiguous, we construe and enforce the contract as written.'" *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527; 791 NW2d 724 (2010), quoting *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).

We find that the trial court properly granted summary disposition because the plain and unambiguous language of the contract declares that the DOD is not a "prospect." Under the definitions section of the Teaming Agreement, the term "prospect" is defined as "a current or prospective customer for goods or services in the Vertical Market to which one party introduces the other in any sales effort in which both Parties participate either directly or indirectly." Pursuant to this definition, a third party is only a "prospect" if one of the contracting parties introduces the third party to the other. Here, the DOD cannot be a "prospect" because the record demonstrates that neither appellants nor appellees introduced one another to the DOD. Because we find the contract is clear and unambiguous, we will honor the bargain struck by the parties and will enforce the contract as written. *Holland*, 287 Mich App at 527.

Appellants contend that the term "prospect" is ambiguous because it irreconcilably conflicts with language found in Schedule 1 of the Teaming Agreement. Under Schedule 1, the DOD re-tagging project sought by the parties was labeled a "specific prospect." If one section of a contract irreconcilably conflicts with another, the contract is ambiguous, and summary disposition is inappropriate. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007); *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). Appellants contend that the inclusion of the DOD as a "specific prospect" in Schedule 1 indicates that the DOD was intended to be a "prospect" under the agreement. We do not agree. By listing the DOD as a "specific prospect" under Schedule 1 of the Teaming Agreement, the plain language of the contract indicated that the parties were focusing their efforts for that particular schedule on the DOD. The plain language of Schedule 1 does not suggest that the DOD, which could not meet the parties' definition of a "prospect" under the definitions section, was intended to become such a "prospect" under Schedule 1. Rather, based on the plain language of the contract, a "specific prospect" represented an already identified business venture, while a "prospect" represented a new business venture that one party would bring to the other. Thus, the contract, "although inartfully worded[,] . . . fairly admits of but one interpretation"—

that a third party which neither party introduced to the other cannot be a "prospect" under the agreement. *Meagher*, 222 Mich App at 722. Therefore, because we find that the contract fairly admits of this one meaning, we find that summary disposition in favor of appellees was appropriate. *Id.* at 722-723.

Appellants next contend that appellees breached the confidentiality section of the Teaming Agreement. Under the agreement, confidential information is defined as:

> (i) written information received from the other Party that is marked or identified as confidential;
>
> (ii) oral or visual information identified as confidential at the time of disclosure; and
>
> (iii) oral or visual information that the receiving Party knew, or should have known, based on the circumstances, should be treated as confidential.

The confidentiality section of the Teaming Agreement also provides exceptions, including an exception for information that was already known by the receiving party.

We find that summary disposition in favor of appellees was appropriate because there was no genuine issue of material fact regarding whether appellees used or disclosed any confidential information belonging to appellants. Appellants allege that appellees misappropriated confidential information by using a collaborative PowerPoint presentation made by both appellants and appellees. However, appellants fail to produce any evidence in support of its claim. Therefore, summary disposition was appropriate. *Coblentz v Novi*, 475 Mich 558, 567-569; 719 NW2d 73 (2006) (the non-moving party must support its claim with evidence in order to survive a motion for summary disposition). Indeed, the PowerPoint was a collaborative presentation, and appellants fail to allege what, if any, information it provided to the project that was confidential and later disclosed by appellees. Accordingly, we find that there was no genuine issue of material fact, and summary disposition in favor of appellees was appropriate.

We also reject appellants' claim brought under the Michigan Uniform Trade Secrets Act, MCL 445.1901 *et seq.* Under MCL 445.1902(d), a trade secret is

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:
>
> (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Summary disposition was appropriate because appellants failed to identify a trade secret. See *Dura Global Technologies, Inc v Magna Donnelly Corp*, 662 F Supp 2d 855, 859 (ED Mich, 2009) (the party claiming trade secret protection "bears the burden of pleading and proving the

specific nature of the trade secret."). Indeed, rather than identifying a trade secret, appellants vaguely referenced a process gained from their employees' general knowledge of the warehousing industry. This is not sufficient to establish their claim because the general knowledge of an employee does not constitute a trade secret. *Agency Solutions.Com, LLC v TriZetto Group, Inc*, 819 F Supp 2d 1001, 1017 (ED Cal, 2011). Moreover, appellants fail to allege how appellees misappropriated their alleged trade secret. Accordingly, we find that summary disposition was appropriate because there was no genuine issue of material fact for trial. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Appellants also contend that the trial court erred by granting summary disposition in favor of appellees on their tortious interference claim. Appellants allege that summary disposition is inappropriate because there was a genuine issue of material fact regarding whether appellees interfered with their business relationship or expectancy with the DOD. A claim for tortious interference with a business relationship requires proof of four elements: "[1]the existence of a valid business relationship or expectancy, [2] knowledge of the relationship or expectancy on the part of the defendant, [3] an intentional interference by the defendant inducing or causing a termination of the relationship or expectancy, and [4] resultant damage to the plaintiff." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 323; 788 NW2d 679 (2010) (quotation omitted).

Regarding the first element, a business expectancy must be more than "mere wishful thinking." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984). In this case, we find that summary disposition was appropriate because appellants failed to identify a business relationship or expectancy with the DOD. *Joba Const Co, Inc v Burns & Roe Inc*, 121 Mich App 615, 635; 329 NW2d 760 (1982) (in order to survive a motion for summary disposition, a party alleging tortious interference must assert a specific and realistic business expectancy). Appellants failed to demonstrate that they had anything more than mere wishful thinking that they would conduct business with the DOD because they never conducted business with the DOD in the past and failed to even bid on the DOD projects at issue.

Moreover, we find that summary disposition was appropriate because appellants failed to demonstrate the third element of a tortious interference claim, i.e., an intentional interference by appellees. This element required appellants to demonstrate that appellees "did something illegal, unethical or fraudulent." *Dalley*, 287 Mich App at 324. Appellants do not allege, and the record does not support, that appellees did anything fraudulent, illegal, or unethical. Indeed, rather than doing something illegal, unethical, or fraudulent, appellees obtained their subsequent contracts with the DOD by bidding on opportunities that were made available to the public via a government website. Accordingly, summary disposition was appropriate.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck